

E-filing

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

United States of America,

NO. C 05-02144 JW

Plaintiff,

v.

**ORDER GRANTING UNOPPOSED
MOTION OF UNITED STATES TO
ENTER CONSENT DECREE**

The Newark Group, Inc.,

Defendant.

Before this Court is a Motion to Enter Consent Decree by the United States ("Plaintiff"), filed on August 9, 2005. This motion is unopposed by The Newark Group, Inc. ("Defendant"). The parties have waived a hearing on the unopposed motion. For the reasons set forth below, this Court GRANTS the Unopposed Motion of United States to Enter Consent Decree.

A court has the authority to review or reject a settlement proposal. See SEC v. Randolph, 736 F.2d 525, 529 (9th Cir. 1984). But, courts will typically approve entry of a consent decree when the decree is fundamentally fair, adequate and reasonable, and in conformity with applicable law. See U.S. v. State of Oregon, 913 F.2d 576, 580 (9th Cir. 1990). In particular, when a government agency charged with protecting the public interest has "pulled a laboring oar in constructing the proposed settlement...a district court reviewing a proposed consent decree must refrain from second-guessing the Executive Branch." U.S. v. Montrose Chem. Corp., 50 F.3d 741, 746 (9th Cir. 1995).

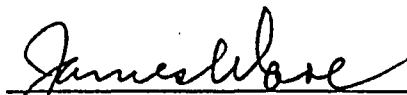
1 Additionally, a court must accept or reject the consent decree as submitted. See Officers for Justice
2 v. Civil Serv. Comm'n, 688 F.2d 615, 630 (9th Cir. 1982) ("the settlement must stand or fall as a
3 whole").

4 On May 25, 2005, Plaintiff filed a complaint in this matter and simultaneously lodged a
5 consent decree ("Consent Decree") with this Court that, upon this Court's approval, would resolve
6 Plaintiff's claims. Plaintiff's complaint concerns environmental problems posed by the Lorentz
7 Barrel and Drum Superfund Site ("Site") in San Jose, California. Defendant owns a 1.47 acre
8 portion of the Site ("Property"). The terms of the Consent Decree require Defendant to maintain an
9 asphaltic cap previously installed over the Property, record deed restrictions with respect to the
10 Property, and reimburse the United States to the amount of \$15,000 for past response costs incurred
11 at the Site. Upon review of these terms and the parties' submitted papers, this Court determines that
12 the Consent Decree is fair, reasonable, consistent with the goals of the underlying statute, and is in
13 the public interest.

14 Accordingly, the Motion is GRANTED.

15
16
17 Dated: September 6, 2005

18 05cv2144 consentdecree


JAMES WARE
United States District Judge

1 THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

2 Charles M. O'Connor charles.oconnor@usdoj.gov
3 Matthew Adam Fogelson matthew.fogelson@usdoj.gov

4 THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN MAILED TO:

5 Kevin V. Ryan
6 United States Attorney
7 450 Golden Gate Avenue
8 P.O. Box 36055
9 San Francisco, CA 94102

10 Dated: September 6, 2005

Richard W. Wieking, Clerk

By 

Ronald L. Davis
Courtroom Deputy